Shaw's Supermarkets, Inc. *and* Teamsters Union Local 340 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO. Cases 1–CA–24543 and 1–RC–18882

June 13, 1991

SUPPLEMENTAL DECISION, ORDER, AND CERTIFICATION OF RESULTS

BY MEMBERS CRACRAFT, DEVANEY, AND RAUDABAUGH

On July 14, 1988, the National Labor Relations Board issued its Decision and Order in this proceeding in which it found that the Respondent had violated Section 8(a)(1) of the Act by threatening employees that it would bargain from scratch starting from a level of substantially reduced wages and benefits if the employees elected a union to represent them.[1] The Board also found that this amounted to objectionable conduct,[2] warranting setting aside the election conducted on January 20, 1987.[3]

Subsequently, the Respondent filed with the United States Court of Appeals for the First Circuit a petition for review of the Board's Order, and the Board filed a cross-petition for enforcement of its Order. Thereafter, in an opinion dated August 31, 1989, the court denied enforcement and remanded the case to the Board for further proceedings consistent with the court's opinion.[4] By letter dated January 30, 1990, the Board notified the parties in this proceeding that it had decided to accept the court's remand and that statements of position could be filed with respect to the issues raised by the court's opinion.

On February 27, 1990, the Respondent filed a statement of position contending that the court had correctly concluded that Board precedent supports dismissing the 8(a)(1) allegation and that this case provides an inappropriate vehicle for the Board to devise a new rule on the issue of ''bargaining from scratch'' statements. No other party filed a response to the Board's request for statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its opinion, the court concluded that the Board had deviated, without explanation, from precedent on ''bargaining from scratch'' statements. Thus, the court examined Board precedent on ''bargaining from scratch'' statements in two categories: lawful explanations of the give-and-take of bargaining, and unlawful threats to bargain regressively or to eliminate benefits before bargaining begins. The court concluded that the statements at issue in the instant case[5] clearly fell within the former category and that the Board's finding of a violation therefore departed from precedent. It then stated that the Board is free to modify or change its rule, or depart from or apply prior precedent, as long as it explains why the change is reasonable. It, accordingly, declined to enforce the Board's Order and remanded the case to the Board.

The Board has accepted the remand. Hence, the law of the case is that the Respondent's conduct is lawful under extant Board law. We respectfully decline the court's invitation to change extant Board law. For, with due respect to the court, we continue to believe that, under that law, conduct like that involved herein is unlawful. However, given the law of this case, we shall dismiss the complaint. In addition, since the law of the case is that the conduct was not coercive, we conclude that the objection based on that conduct should be overruled.[6]

ORDER

The Board's Order in this proceeding (289 NLRB 844) is vacated and the complaint dismissed in its entirety.

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Teamsters Union Local 340 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO.

[1] 289 NLRB 844.

[2] This was the sole objection sustained in the underlying proceeding.

[3] The tally was 46 for the Teamsters, Local 340, 1 for the Independent Foodhandlers and Warehouse Employees, and 71 for neither.

[4] *Shaw's Supermarkets v. NLRB*, 884 F.2d 34.

[5] In this case, according to the credited testimony, Vice President of Distribution Wyatt made statements at January 15, 1987 preelection meetings that ''employees would be guaranteed minimum wages and workmen's comp[ensation] and that's where our collective-bargaining process would begin.'' In finding this statement to be an unlawful threat of regressive bargaining with a resulting loss of benefits, the Board found that Wyatt's several references to collective bargaining as a ''give-and-take'' process, his example of how a union in another warehouse bargained away a profit-sharing plan in exchange for a pension plan, and his statement that the Respondent would start with minimum wages and workmen's compensation and ''build from that point,'' did not constitute assurances that the Respondent would not require the Union to give up existing benefits. The Board noted that unlike the Employer's statement in *La-Z-Boy*, 281 NLRB 338, 340 (1986), that it was ''ridiculous'' to think the company would pay minimum wages regardless of the outcome of negotiations, Wyatt's statements did not give employees the unambiguous message that they will not initially be stripped of all existing benefits through collective bargaining. Instead, the Board found that Wyatt's statement that the employees would be ''guaranteed'' minimum wages and workmen's compensation and that the parties would have to ''build'' from that point conveyed the opposite message, that collective bargaining starts with the loss of existing benefits and proceeds with an effort by the Union to have those benefits restored. 289 NLRB 844 at fn. 3.

[6] See *Raleys, Inc.*, 272 NLRB 1136 (1984).